



U.S. Department of Transportation  
Federal Highway Administration

# Buy America and Utilities Federal Law and FHWA Policy

Presented By: Ken Leuderalbert  
FHWA Utilities Program Manager

March 11, 2014

**100<sup>th</sup> ANNUAL  
PURDUE  
ROAD SCHOOL**  
*A great Indiana Tradition*

# Buy America

(the law in part . . .)

23 USC 313(a):

*“Notwithstanding any other provision of law, the Secretary of Transportation **shall not obligate any funds** authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title and administered by the Department of Transportation, **unless steel, iron, and manufactured products used in such project are produced in the United States.**”*



## San Francisco-Oakland Bay Bridge





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## U.S. Bridges, Roads Being Built by Chinese Firms

Cities hire Chinese instead of American workers for building projects.

02:55 | 09/23/2011



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## MAP-21 S. 1518

### SEC. 1518. BUY AMERICA PROVISIONS.

Section 313 of title 23, United States Code, is amended by adding at the end the following:

“(g) Application to Highway Programs.--The requirements under this section **shall apply to all contracts eligible for assistance** under this chapter for a project carried out **within the scope of the** applicable finding, determination, or **decision** under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), **regardless of the funding source of such contracts, if at least 1 contract for the project is funded** with amounts made available to carry out this title.”



Example: application of Buy America requirements to all contracts eligible for assistance within the scope of a NEPA document'

*Knik Arm Crossing,  
Anchorage, AK*





## FHWA Letter to AASHTO 12/20/2012

“DOT has determined that **Buy America applies to any utility work** that is accomplished as a result of a Federal-aid highway project. As a result of the MAP-21 amendment, **the application of Buy America cannot be narrowed to exclude utility work**, even if such utility work is not reimbursed with Federal-aid highway funds. The only instance where **Buy America would not apply to utility work is where such work is not eligible for Federal-aid** because the State is legally unable to pay the utility. In these instances, such work would not constitute a contract that is eligible for assistance.”



## Successful Practices

- FHWA expects States and LPAs to enforce Buy America requirements
- States should consider Buy America requirements during preliminary engineering phase to avoid delays during construction, and explore the use of alternate domestic products.
- States should have adequate material certification procedures in their program to ensure compliance.
  - Improper documentation or lack of documentation is easy to show.
  - Showing fraud is difficult. A pattern must be established.





# Certifications

- ▶ Contractor certification not required by FHWA; however, a valid certification documents compliance.
- ▶ Must be certified by the manufacturer
- ▶ “Step certification” recommended by FHWA and AASHTO
- ▶ Suggested certification language:  
*"All manufacturing processes for these steel and iron materials, including the application of coatings (unless granted a waiver pursuant to 23 CFR 635.410), have occurred in the United States."*




... Well duh !

STINOL		АО "НОВОЛИПЕЦКИЙ МЕТАЛЛУРГИЧЕСКИЙ КОМБИНАТ" NOVOLIPETSK IRON & STEEL CORPORATION									
<b>Продавец (Экспортер)</b> <b>Seller (Exporter)</b> <b>VO TIAJ PROMEXPORT</b> <b>113324 MOSCOW</b> <b>OVCHINNICOVSKAJA NAB, 18/1</b> <b>Грузополучатель, адрес, страна:</b> <b>Customer, Address, Country:</b> <b>INTERMETAL GROUP LTD</b> <b>ROAD TOWN, TORTOLA</b> <b>INT BUILDING, WICHAMPS CAY</b>		<b>Сертификат качества № 119102</b> <b>Quality certificate</b> <b>от 23/12/96</b> <b>Contract № 44-166/06700-147</b> <b>Contract No 28/05/96</b> <b>Заказ № 361654 -96</b> <b>Вагон № 42565234</b> <b>Order No.</b> <b>Freight Car No.</b>									
<b>Наименование и код товара</b> <b>Description and code of goods</b> <b>720823990</b>		<b>СТАНДАРТ</b> <b>Standard</b> <b>ASIM A 635</b>									
<b>КОЛИЧЕСТВО</b> <b>Quantity</b> <b>3</b>		<b>КОМПАНИИ</b> <b>Company</b> <b>3</b>									
<b>NOT ROLLED COILS</b>											
№ Item No.	№ Lot No.	Номера планов Nos. of Heats	Марка стали Grade of Steel	Размеры, мм Dimensions, mm	Номера Nos.	Масса (кг) Mass (kg)					
1	1	1662960	1020	4.57 1210	366	20710					
2	1	1662960	1020	4.57 1210	367	20510					
3	1	1662960	1020	4.57 1210	368	20410					
						61630 61600					
<b>Показатели качества товара</b> <b>Quality Characteristic of Goods</b> <b>Chemical composition, %</b>				<b>Composition, %</b>							
№ Item No.	№ Lot No.	Номера планов Nos. of Heats	C	Si	Mn	S	P	Al	Cr	Ni	Cu
1	1	1662960	.17	.03	.44	.016	.011	.038	.01	.01	.03
2	1	1662960	.17	.03	.44	.016	.011	.038	.01	.01	.03
3	1	1662960	.17	.03	.44	.016	.011	.038	.01	.01	.03
<b>Механические свойства</b> <b>Mechanical Properties</b>				<b>Ударность</b> <b>Impact</b>							
№ Item No.	№ Lot No.	Номера планов Nos. of Heats	Предел прочности Tensile strength	Предел текучести Yield strength	Удлинение Elongation	Ударная ударность Impact toughness	Ударная вязкость Cold bend tests	Ударная вязкость after Mechanical aging			
1	1	40023	457.0	357.0	45.0	satisfactory					
2	1	40023	457.0	357.0	45.0						
3	1	40023	457.0	357.0	45.0						
<b>Примечание</b> <b>Тех. на ком. пр-ва: 760-800 Ссылка: 570-610</b> <b>Note:</b> <b>Дополнительная информация, полученная</b> <b>Additional marking of Goods Buyer</b> <b>Подтверждено, что результаты проверки соответствуют согласованным условиям</b> <b>This is to certify, that the test results are in agreement with the specifications.</b>				<b>9803385</b>							

Mill cert is in Russian !!

STINOL		АО "НОВОЛИПЕЦКИЙ МЕТАЛЛУРГИЧЕСКИЙ КОМБИНАТ" NOVOLIPETSK IRON & STEEL CORPORATION	
<b>Продавец (Экспортер)</b> <b>Seller (Exporter)</b> <b>VO TIAJ PROMEXPORT</b> <b>113324 MOSCOW</b> <b>OVCHINNICOVSKAJA NAB, 18/1</b> <b>Грузополучатель, адрес, страна:</b> <b>Customer, Address, Country:</b> <b>INTERMETAL GROUP LTD</b> <b>ROAD TOWN, TORTOLA</b> <b>INT BUILDING, WICHAMPS CAY</b>		<b>Сертификат качества № 119102</b> <b>Quality certificate</b> <b>от 23/12/96</b> <b>Contract № 44-166/06700-147</b> <b>Contract No 28/05/96</b> <b>Заказ № 361654 -96</b> <b>Вагон № 42565234</b> <b>Order No.</b> <b>Freight Car No.</b>	
<b>Наименование и код товара</b> <b>Description and code of goods</b> <b>720823990</b>		<b>СТАНДАРТ</b> <b>Standard</b> <b>ASIM A 635</b>	
<b>КОЛИЧЕСТВО</b> <b>Quantity</b> <b>3</b>		<b>КОМПАНИИ</b> <b>Company</b> <b>3</b>	
<b>NOT ROLLED COILS</b>			
№ Item No.	№ Lot No.	Номера планов Nos. of Heats	Марка стали Grade of Steel
1	1	1662960	1020
2	1	1662960	1020
3	1	1662960	1020
		61630 61600	
<b>Показатели качества товара</b> <b>Quality Characteristic of Goods</b> <b>Chemical composition, %</b>			
№ Item No.	№ Lot No.	Номера планов Nos. of Heats	C
1	1	1662960	.17
2	1	1662960	.17
3	1	1662960	.17
<b>Механические свойства</b> <b>Mechanical Properties</b>			
№ Item No.	№ Lot No.	Номера планов Nos. of Heats	Предел прочности Tensile strength
1	1	40023	457.0
2	1	40023	457.0
3	1	40023	457.0
<b>Примечание</b> <b>Тех. на ком. пр-ва: 760-800 Ссылка: 570-610</b> <b>Note:</b> <b>Дополнительная информация, полученная</b> <b>Additional marking of Goods Buyer</b> <b>Подтверждено, что результаты проверки соответствуют согласованным условиям</b> <b>This is to certify, that the test results are in agreement with the specifications.</b>			





UØV-SCA  
17541  
CHINA



## 12/21/2012 memo: “Clarification of Manufactured Products under Buy America”

- ▶ Requirements apply to structural steel or iron components of pavements, bridges, tunnels, etc.
- ▶ Does not apply to manufactured products that are not:
  - ▶ Predominantly steel or iron (90% by weight)
  - ▶ miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct steel components (e.g. cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, etc.)



## Contact and Reference Info

- ▶ Ken Leuderalbert, FHWA Utility Program Manager  
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317-226-5351

- ▶ FHWA Utility Website (includes BA Q&As):

<http://www.fhwa.dot.gov/programadmin/utility.cfm>

- ▶ Construction Program Guide (BA)

<http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>

